Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

Peter Wendt
Petitioner

v.

Ralph Thomas Jr., Sheriff of Carteret County
Respondent
Respondent Superior of Roy Gittings, Deputy Sheriff of Carteret County, and Bill O'Brien, (former) Deputy Sheriff of Carteret County

v.

Travelers Bond, aka Travelers Casualty and Surety Company of America, Surety
Respondent

On Petition For Writ of Certiorari
To The North Carolina Supreme Court

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QUESTION PRESENTED FOR REVIEW

Can the NCSC deny petitioner equal protection where such denial involved an unreasonable application of clearly established State precedence, as determined by that Court, as the denial is not supported by its own previous decisions, and where such decision leaves intact two opposing unanimous appellate court decisions?

PARTIES TO THE PROCEEDINGS

Peter Wendt, Petitioner

Ralph Thomas, Jr., Sheriff of Carteret County, Respondent

Travelers Bond, aka Travelers Casualty and Surety Company of America, Surety, Respondent

Attornery for Respondents
Claude R. Wheatly III

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PETITION FOR WRIT OF CERTIORARI

Petitioner Peter Wendt respectfully petitions for a writ of ***certiorari*** to review the Order of the North Carolina Supreme Court.

STATEMENT OF BASIS OF JURISDICTION

On December 12, 2003 Appellant commenced an action in the Superior Court of Carteret County, North Carolina, Case No. 03-CVS-1370, against the official bond and the surety of the above named Respondent Ralph Thomas Jr. for the intentional and willful neglect, misconduct, and misbehavior in the due performance of the duty in office in the name of the State, N.C.G.S. 58-76-5, of subordinates Deputy Roy Gittings and Deputy Bill O'Brien.

On the June 28, 2004 the final order granting Respondents' Motion for Summary Judgment was filed.

On July 22, 2004 Petitioner timely filed his Notice of Appeal to the North Carolina Court of Appeals of the Order granting summary judgment to Respondents.

On November 1, 2005 the North Carolina Court of Appeals dismissed Petitioner's Appeal for "substantial rules violations".

On December 1, 2005 Petitioner filed his Notice of Appeal to the North Carolina Supreme Court pursuant to N.C. App. Rule 14(a), 14(b)(2) based upon a constitutional question.

On September 7, 2006 Petitioner re-filed his Notice of Appeal, on permission by the Clerk of the North Carolina Supreme Court due to its being lost

On March 27, 2007 The North Carolina Supreme Court dismissed Petitioner's appeal ex mero motu for lack of substantial constitutional question.

On March 28, 2007 Petitioner filed a petition for Writ of Certiorari, pursuant to Rule 21(a)(2), to the North Carolina Supreme Court for review of the decision of the North Carolina Court of Appeals.

On May 3, 2007 the North Carolina Supreme Court denied Petitioner's Petition for Writ of Certiorari.

The jurisdiction of the United States Supreme Court is invoked pursuant to Title 28 U.S.C. § 1257 (a) from the final judgment rendered by the highest court of a State in which a decision could be had.

The Honorable Supreme Court of the United States is the proper court with jurisdiction upon the timely filing of the Petition for Writ of Certiorari to the Supreme Court of North Carolina.

CONSTITUTIONAL AMENDMENT INVOLVED

Article 1, Section 19, North Carolina Constitution; Article IV, Section 13, North Carolina Constitution; Fourteenth Amendment, Section 1, of the Constitution of the United States of America as applied to the states.

STATEMENT OF THE CASE

The Proceedings Below

On December 12, 2003 Appellant commenced an action in the Superior Court of Carteret County, North Carolina, Case No. 03-CVS-1370.

On the June 28, 2004 the final order granting Respondents' Motion for Summary Judgment was filed.

As the merits of petitioner's case are languishing unheard in the North Carolina Court of Appeals and are not the subject of this Petition, they are excluded.

On July 22, 2004 Petitioner timely filed his Notice of Appeal to the North Carolina Court of Appeals, pursuant to N.C.G.S. 1-277 and 7A-27(e), for **review of summary judgment.**

On November 1, 2005 the North Carolina Court of Appeals dismissed Petitioner's Appeal for "substantial rules violations". (Appendix A)

On December 1, 2005 Petitioner timely filed his Notice of Appeal to the North Carolina Supreme Court pursuant to N.C. App. Rule 14(a), 14(b)(2) citing substantive rights and equal protection, both being State constitutional questions..

On March 27, 2007 The North Carolina Supreme Court dismissed Petitioner's appeal ex mero motu for lack of substantial constitutional question.

On March 28, 2007 Petitioner filed a petition for Writ of Certiorari to the North Carolina Supreme Court, pursuant to Rule 21(a)(2), for review of the decision of the North Carolina Court of Appeals.

On May 3, 2007 the North Carolina Supreme Court denied Petitioner's Petition for Writ of Certiorari without discussion. (Appendix B)

Statement of the Facts

On December 12, 2003 Petitioner commenced an action in the Superior Court of Carteret County, North Carolina, Case No. 03-CVS-1370.

As the merits of petitioner's case are languishing in the North Carolina Court of Appeals and are not the subject of this Petition, they are excluded.

On the June 28, 2003 the final order granting Respondent's Motion for Summary Judgment was filed.

On July 22, 2003 Petitioner filed his Notice of Appeal to the North Carolina Court of Appeals for **review of summary judgment.**

Without review of the record as to whether there is a genuine issue of material fact and whether the moving party is entitled to judgment, the appellate panel, on November 1, 2005, dismissed Appellant's appeal for substantial violations of the Rules of Appellate Procedure, Appellate Rules 10(c)(1) and 28(b)(6), as the panel stated referencing Appellant's assignments of error, "They are not "confined to a single issue of law"; do not state "plainly, concisely and without argumentation the legal basis upon which error is assigned"; and do not include "record or transcript references."

The panel also stated that Petitioner's assignments attempt to assign error to every aspect of the case, allowing Petitioner to argue everything and anything; *'This assignment – like a hoopskirt – covers everything and touches nothing'"* ***Wetchin v. Ocean Side Corp.****, 167 N.C. App. 756, 759, 606 S.E. 2d 407, 409 (2005) (quoting State v. Kirby, 276 N.C. 123, 131, 171 S.E. 2d 416, 422 (1970))"*

The panel went on to apply ***Viar v. N.C. DOT, 359 N.C. 400*** as "the Rules are mandatory and "failure to follow

these rules will subject an appeal to dismissal". (Appendix A)

On December 1, 2005 Petitioner appealed to the North Carolina Supreme Court citing constitutional questions, namely denial of substantive rights *(N.C. Const. Art.IV Sec.13)* and equal protection *(N.C. Const. Art.I Sec.19)*.

On March 27, 2007 the North Carolina Supreme Court dismissed Petitioner's appeal ex mero motu for lack of substantial constitutional question. This dismissed appeal is not the subject of this petition.

On March 28, 2007 Petitioner filed a Petition for Writ of Certiorari to the North Carolina Supreme Court, pursuant to Rule 21(a)(2), for review of the decision of the North Carolina Court of Appeals.

Said Petition referenced a very recent case from the NC Court of Appeals where an unanimous appellate panel, in dealing with the subject of summary judgment and rules violations exactly like Petitioner's and, founded on *stare decisis*, concluded the opposite of Petitioner's unanimous appellate panel.

On May 3, 2007 the North Carolina Supreme Court denied Petitioner's Petition for Writ of Certiorari without discussion. (Appendix B)

REASONS FOR GRANTING THE WRIT

The issue here is the application of N. C. R. App. P. Rule 10 and 28 as applied to an appeal from an order granting Summary Judgment and the subsequent denial of equal protection, a violation of *N.C. Const. Art.I Sec.19* and the *14th Amendment, section 1, to the Constitution of the United States* as applied to the States, by the North Carolina Supreme Court in its denial of petitioner's Petition for Writ of Certiorari.

Stare decisis commands judicial respect for a court's earlier decisions and the rules of law. *Harris* v. *United States*, 536 U.S. 545, 556-557, 122 S. Ct. 2406, 153 L. Ed. 2d 524 (2002)

Stare decisis "'promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" *United States* v. *International Business Machines Corp.*, 517 U.S. 843, 856 (1996) (quoting *Payne* v. *Tennessee*, 501 U.S. 808, 827 (1991).

In *Nelson v Hartford*, N.C. COA05-1052, 6 June 2006, quoting *Ellis v. Williams*, 319 N.C. 413, 355 S.E.2d 479 (1987) the *Nelson* court stated

> *"The purpose of summary judgment is to eliminate formal trial when the only questions involved are questions of law." ... " summary judgment, by definition, is always based on two underlying questions of law: (1) whether there is a genuine*

issue of material fact and (2) whether the moving party is entitled to judgment" ... "On appeal, review of summary judgment is necessarily limited to whether the trial court's conclusions as to these questions of law were correct ones. It would appear, then, that ***notice of appeal adequately apprises the opposing party and the appellate court of the limited issues to be reviewed. Exceptions and assignments of error add nothing."*** (emphasis added)

The above follows as the *Nelson* court continued by quoting from *Vernon, Vernon, Wooten, Brown & Andrews, P.A. v. Miller, 73 N.C. App. 295, 326 S.E.2d 316 (1985)*

"We observe first that defendant did not set out, in the record on appeal, any exceptions or specific ***assignments of error as required by Rule 10(a)*** *of the Rules of Appellate Procedure. We conclude, however,* ***that none is required where, as here, the sole question presented in defendant's brief is whether the trial court erred in granting summary judgment in favor of the plaintiff. The appeal from the judgment is itself an exception thereto.*** [citations omitted]

Recently, this Court stated: An appeal from an order granting summary judgment raises only the issues of whether, on the face of the record, there is any genuine issue of material fact, and whether the prevailing party is entitled to a judgment as a matter of law. ***Therefore, the notice of appeal***

> ***suffices as an assignment of error directed to the order of summary judgment***. (emphasis added)

It is quite clear that in North Carolina an appeal from summary judgment requires no assignments of error at all, and one may intuit that a review of the record to determine "*whether, on the face of the record, there is any genuine issue of material fact, and whether the prevailing party is entitled to a judgment as a matter of law*" is mandated.

This was again reiterated by the North Carolina Court of Appeals in *Nelson v Hartford, N.C. COA05-1052, June 6 2006* in which the *Nelson* court states

> *In any case, Viar does not address the issue of assignments of error and summary judgment, and does not overrule Ellis.* ***Accordingly, we follow Ellis and the precedents of this Court****, and determine that plaintiffs' assignment of error with respect to the order granting summary judgment is sufficient. We therefore deny Hartford's motion to dismiss the assignment of error.*

N.C.R. App. P. Rule 10 states in relevant part that:

> *(a) [T]he scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal in accordance with this Rule 10 ....*
> *(b) (1) A listing of the assignments of error upon which an appeal is predicated shall be stated*

> *(c) at the conclusion of the record on appeal, in short form without argument, and shall be separately numbered. Each assignment of error shall, so far as practicable, be confined to a single issue of law; and shall state plainly, concisely and without argumentation the legal basis upon which error is assigned.*

Regarding summary judgment, as Rule 10 facially appears to require assignments, whether an Appellant mistakes the Rule as mandatory and includes them they are *"at best ... a superfluous formality" (Nelson quoting Ellis) "which merely restate the obvious" (Nelson quoting Ellis).*

N.C.R.App. P Rule 28(b)(6) states in relevant part *"[i]mmediately following each question shall be a reference to the assignments of error pertinent to the question ...".*

It follows that where Rule 10 is not required, Rule 28(b)(6) follows.

The Appellate Court's basis for its decision dismissing Petitioner's appeal states

> "Plaintiff's assignments of error are in substantial violation of N.C.R.App.P. 10(c)(1). They are not "confined to a single issue of law"; do not state "plainly, concisely and without argumentation the legal basis upon which error is assigned"; and do not include "record or transcript references. ...: (Appendix A)

It would be ridiculous to state all the argument offered by the appellate panel in its application of Rule 10. Rule 10 is not applicable, acknowledged by the panel in page 1 of its decision where it states

> "Plaintiff ... appeals from entry of summary judgment in favor of defendants. ... On 15 April 2004 defendants filed a motion for summary judgment, which was granted on 28 June 2004. Plaintiff appeals from this order." (Appendix A)

Petitioner made extensive reference to *Nelson* in his Petition to the North Carolina Supreme Court;

> "[t]he North Carolina Court of Appeals, on June 6 2006, decided ***Nelson v Hartford*** *[N.C. COA05-1052, June 6 2006]* in which it stated
>
> > *Hartford has moved to dismiss the appeal, asserting that plaintiffs'* ***assignments of error violate North Carolina Rule of Appellate Procedure 10(c)(1) because they fail to "state plainly . . . the legal basis upon which error is assigned.*** *" Plaintiffs' assignments of error in the record are:*
> >
> > *1. The Durham County Superior Court's Order Granting in Part Defendant Hartford's Motion to Dismiss, dated October 11, 2004, and filed on October 14, 2004.*

> *2. The Durham County Superior Court's Order Granting Defendant Hartford's* ***Motion for Summary Judgment****, dated March 7, 2005, and filed March 14, 2005."* (emphasis added)

It is that panels' decision as to assignment #2 that is of interest; ***"We therefore deny Hartford's motion to dismiss the assignment of error."***

Continuing,

> "In ***Nelson v Hartford,* COA05-1052** June 6 2006, the unanimous *Nelson* Appellate panel had something quite different to say concerning Nelson's 2nd assignment, along with a discussion on summary judgment, than Appellant's panel-
>
> > *This Court is required to follow the decisions of our Supreme Court, as well as our prior precedents. Although the Supreme Court's recent decision in Viar v. N.C. DOT, 359 N.C. 400, 610 S.E.2d 360 (2005), reh'g denied, 359 N.C. 643, 617 S.E.2d 662 (2005), directed this Court not to create an appeal for the appellant, and to ensure an appellee has notice of the basis upon which an appellate court might rule, we think the reasoning of Viar and Ellis are compatible.* ***In any case, Viar does not address the issue of assignments of error and summary judgment, and does not overrule Ellis. Accordingly, we follow***

> ***Ellis and the precedents of this Court, and determine that plaintiffs' assignment of error with respect to the order granting summary judgment is sufficient. We therefore deny Hartford's motion to dismiss the assignment of error."***

The unanimous *Nelson* appellate panel, clearly conforming to *stare decisis*, granted Nelson equal protection (review of summary judgment) by denying *Hartford's* motion to dismiss as *Nelson's* second assignment was sufficient, even not required at all. Yet Petitioner's unanimous appellate panel denied Petitioner the same equal protection afforded *Nelson* by dismissing Petitioner's appeal for the very reasons stated in *Hartford's* motion to dismiss which the *Nelson* Panel meritoriously found erroneous.

Petitioner's appellate panel stated in its decision

> *The North Carolina Supreme Court recently addressed the issue of an appellant's violation of the Rules of Appellate procedure:*
>
> > *The North Carolina Rules of Appellate Procedure are mandatory and "failure to follow these rules will subject an appeal to dismissal." Viar v N.C. Dep't of Transp., 359 N.C. 400* (Appendix A)

Petitioner's appeal was subsequently dismissed for substantial violation of the Rules of Appellate Procedure. (Appendix A) In misapplying Rule 10 and holding to

Viar the appellate panel ignored *stare decisis* where ***"appeal from the judgment is itself an exception thereto"*** and denied Petitioner equal protection. The North Carolina Supreme Court continued that denial of equal protection in its denial of Petitioner's Petition for Writ of Certiorari. (Appendix B)

The North Carolina Appellate reiterated *Nelson* again as recently as 3 July 2007 in *Williams v. Homeq Servicing Corp.*, NO. COA06-674, concerning *summary judgment* where it states

> HomEq has moved to dismiss the appeal asserting the plaintiffs' assignments of error do not comply with Rule 10 of the North Carolina Rules of Appellate Procedure because they fail to specifically assign error to the trial court's order. . . .
>
> In *Nelson v. Hartford Underwriters Ins. Co.*, 177 N.C. App. 595, 630 S.E.2d 221 (2006), this Court recently reaffirmed that a notice of appeal from a summary judgment order is itself sufficient to assign error to the order of summary judgment. The reasoning is that "[a]n appeal from an order granting summary judgment raises only the issues of whether, on the face of the record, there is any genuine issue of material fact,and whether the prevailing party is entitled to a judgment as a matter of law." *Id.* at 601, 630 S.E.2d at 226-27 (citations omitted). *See also*, *Ellis v. Williams*, 319 N.C. 413, 415, 355 S.E.2d 479, 481 (1987). Therefore, the plaintiffs'

> assignments of error are sufficient to comply with Appellate Rule 10.

It is noteworthy that the above was written by Appellate Judge Calabria, the same judge who concurred otherwise in Petitioners case. The Judge has changed her stripes. (Appendix A)

Petitioner is being continually denied review of the record on appeal from an order granting summary judgment by first the Appellate Court's application of inapplicable rules followed by the NC Supreme Court's denial of Petitioner's Writ of Certiorari based on this very same argument, fully supported by *stare decisis* and most recently reaffirmed (*Williams v Homeq*) by a very judge who concurred in dismissal of Petitioners original appeal for rules violations on assignment of error the judge now finds 'sufficient'.

Petitioner believes the foregoing to be enough but goes one step further.

As N.C.R.App.P Rule 10 makes no explicit exception concerning *summary judgment*, Petitioner sees a rational for the following; Appellate Rule 2 as applied to Rule 10 regarding *summary judgment* within the confines of *stare decisis*:

On May 4, 2007, the same day the decision of the North Carolina Supreme Court (Appendix B) denying Petitioner's petition came out, the North Carolina Supreme Court stated in *North Carolina v Hart, No. 446A06 (May 4, 2007)* in correcting the Appellate Court's misapplications of *Viar*:

Subsequently, in State v. Buchanan, 170 N.C. App. 692, 613 S.E.2d 356 (2005), the Court of Appeals is interpreted and improperly extended Viar when it opened with the following: Recently, in Viar v. N.C. Dep't of Transp., our Supreme Court admonished this Court to avoid applying Rule 2 of the Rules of Appellate Procedure even in instances where a party's "Rules violations did not impede comprehension of the issues on appeal or frustrate the appellate process." . . . Because we are constrained to follow the dictates of Viar, we must hold that Defendant's failure to comply with Rule 10(b) by failing to renew his Motion to Dismiss at the close of all evidence mandates a dismissal of this appeal. 170 N.C. App. at 693, 613 S.E.2d at 356 (citation omitted). Later in the opinion, the court said: In Viar, our Supreme Court stated that this Court may not review an appeal that violates the Rules of Appellate Procedure even though such violations neither impede our comprehension of the issues nor frustrate the appellate process. Id. at 695, 613 S.E.2d at 357 (citation omitted). These excerpts reveal that the Court of Appeals in Buchanan misapplied the holding of this Court's Viar decision. In Viar, we neither admonished the Court of Appeals to avoid applying Rule 2, nor did we state that the court may not review an appeal that violates the Rules, even when rules violations "d[o] not impede comprehension of the issues on appeal or frustrate the appellate process." 359 N.C. at 402, 610 S.E.2d at 361. We simply noted that the Court of Appeals majority had justified its application of Rule 2 in Viar by using that phrase. Rather than approving this justification for

> *applying Rule 2 to that scenario, we rejected it and dismissed the Viar appeal. In so doing, we held that the Court of Appeals improperly applied Rule 2 when it created an appeal for the appellant and addressed issues not raised or argued.*

As Petitioner believes *stare decisis* is the benchmark, Petitioner merely quotes from *North Carolina v Hart* for its clarity concerning Appellate Rule 2.

As Rule 10 does not explicitly exclude summary judgment from its dictates, and as the North Carolina Supreme Court rationalizes Rule 10

> *Exceptions and assignments of error are required in most instances because they aid in sifting through the trial court record and fixing the potential scope of appellate review (Nelson* quoting *Ellis v Williams)*

whereby summary judgment is removed from Rule 10 by its very nature

> *We note that the appellate court must carefully examine the entire record in reviewing a grant of summary judgment. Because this is so, no preliminary "sifting" of the type contemplated by the rule need be performed (Nelson* quoting *Ellis v Williams)*

it is arguable that summary judgment is both an automatic and mandatory application of Rule 2 should Rule 10 be taken at face value.

It is quite apparent that Petitioner's appellate panel ignored *stare decisis* and misapplied Rule 10 on appeal from summary judgment thereby *"frustrat[ing] the appellate process" [Hart]*; misapplying *Viar* as applied to Rule 2 should Rule 10, in light of *stare decisis*, be taken at face value, misapplications the Nelson panel did not fall prey to. As Petitioner's panel (Appendix A) and the Nelson panel [*Nelson v. Hartford Underwriters Ins. Co.*, 177 N.C. App. 595, 630 S.E.2d 221 (2006)] are at odds, there is conflict in the Appellate Court which the North Carolina Supreme Court has failed to correct.

Had summary judgment been explicitly excepted in Rule 10 it is highly questionable if Petitioner's appellate panel would have been able to pull such a rabbit out of its hat.

Petitioner believes that the North Carolina Supreme Court, ignoring *stare decisis*, and denying Petitioner's Petition for Writ of Certiorari (Appendix B) has ruled against itself thereby denying Petitioner equal protection, a violation of *N.C. Const. Art.I Sec.19* and the 14th Amendment, section 1, to the Constitution of the United States as applied to the States.

As Aristotle said, *"one cannot say of something that it is and that it is not in the same respect and at the same time"*.

It appears North Carolina begs to differ.

The North Carolina Supreme Court has made a gross error which this pro se Petitioner has unnecessarily had to go to great lengths and expense to correct; remanding the case back to the North Carolina Court of Appeals for

review of the record concerning the granting of summary judgment.

On a final note, Petitioner would state the following;

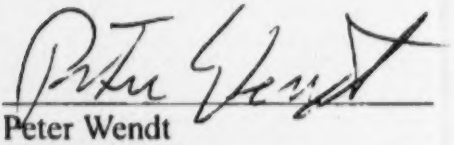
As *review of the record* on appeal from *summary judgment* languishes unheard in the North Carolina Court of Appeals where Petitioner paid the requisite fees for review of *summary judgment*, the contractual obligation (nexus) for review of the record remains unfulfilled; *Article IV, Sec. 13 of the North Carolina Constitution states* ***"No rule of procedure or practice shall abridge substantive rights..."***

CONCLUSION

It is clear that upon an appeal from summary judgment, if *stare decisis* is the benchmark, that assignments of error are superfluous and application of N.C.R. App. P. 10(c) is erroneous. An appeal from summary judgment mandates a review of the record on appeal. To deny such appeal is to deny equal protection of the law. The North Carolina Supreme Court has let stand a bad appellate decision, unsupported by its own previous decisions, also leaving intact opposing unanimous appellate court decisions. Petitioner is entitled to review of the record, mandated upon appeal of an order granting summary judgment. Petitioner is entitled to the same equal protection as afforded to previous appellants as stated in previous cases mentioned in this certiorari. This equal protection is guaranteed by the Fourteenth Article in Amendment of the Constitution of the United States of America, and

Article 1, Section 19 of the North Carolina Constitution.

Respectfully submitted,



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Appendix 1 (A)

NO. COA04-1651

North Carolina Court of Appeals

PETER M. WENDT,
Plaintiff,

v. Carteret County
No. 03 CVS 1370

RALPH THOMAS, JR., Sheriff
Of Carteret County, Respondent
Superior of ROY GITTINGS,
Deputy Sheriff of Carteret County;
BILL O'BRIEN, (former) Deputy
Sheriff of Carteret County; TRAVELERS
BOND, a/k/a Travelers Casualty and Surety Company of
America, Surety,
Defendants.

Appeal by plaintiff from judgment entered 28 June 2004 by Judge Kenneth F. Crow in Carteret County Superior Court. Heard in the Court of Appeals 20 September 2005.

Peter Wendt, plaintiff-appellant, pro se.
Claud R. Wheatly, III for defendants-appellees.

LEVINSON, Judge.

Plaintiff Peter Wendt appeals from entry of summary judgment in favor of defendants. We dismiss the appeal.

Plaintiff filed suit against defendants in December 2003. His complaint alleged misconduct by Carteret County Deputy Sheriff Roy Gittings and Bill O'Brien, and *respondeat superior* liability of Sheriff Ralph Thomas, Jr. He sought certain declarations by the court, as well as $10,000. from defendant Travelers Bond, the surety on Sheriff Thomas's bond. On 15 April 2004 defendants filed a motion for summary judgment, which was granted on 28 June 2004. Plaintiff appeals from this order.

We first review several pertinent Rules from the North Carolina Rules of Appellate Procedure. N.C.R. App. P. 10 provides in relevant part that:

> (a) [T]he scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal in accordance with this Rule 10. . . .
>
> (a) (1) A listing of the assignment of error upon which an appeal is predicated shall be stated at the conclusion of the record on appeal, in short form without argument, and shall be separately numbered. Each assignment of error shall, so far as practicable, be confined to a single issue of law; and shall state

> plainly, concisely and without argumentation the legal basis upon which error is assigned. An assignment of error is sufficient if it directs the attention of the appellate court to the particular error about which the question is made, with clear and specific record or transcript references. . . .

(emphasis added). And N.C.R. App. P. 28(b) (6) requires that "[i]mmediately following each question shall be a reference to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal."

Plaintiff herein set out two assignments of error:

1. The trial court committed reversible error in granting Appellees Summary Judgment as the facts, evidence, exhibits, affidavits, pleadings and other matters of record Appellee relies upon is [sic] legally and factually insufficient to support summary judgment, as a matter of law, as a genuine question of law on the indisputable facts is in controversy and as material facts are in dispute.

2. The trial court committed reversible error in granting Appellees Summary Judgment as North Carolina law does not sanction Trespass.

Plaintiff's assignments of error are in substantial violation of N.C.R. App. P. 10(c)(1). They are not "confined to a single issue of law"; do not state "plainly, concisely and without argumentation the legal basis upon which error is assigned"; and do not include "record or transcript references."

Plaintiff's first assignment of error purports to assign error to almost every aspect of the case in a single assignment of error. "Such an assignment of error is designed to allow counsel to argue anything and everything they desire in their brief on appeal. 'This assignment – like a hoopskirt – covers everything and touches nothing.'" *Wetchin v. Ocean Side Corp.*, 167 N.C. App. 756, 759,606 S.E. 2d 407, 409 (2005) (quoting State v. Kirby, 276 N.C. 123, 131, 171 S.E. 2d 416, 422 (1970)). In addition, plaintiff's second assignment of error fails to allege any legal error. Plaintiff's statement that 'North Carolina law does not sanction Trespass" simply alleges a state policy, but does not set out any error by the trial court.

Plaintiff also violated N.C.R. App.P. 28(b)(6), in that the questions presented in his brief are not followed by "references to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal."

The North Carolina Supreme Court recently addressed the issue of an appellant's violations of the Rules of Appellate Procedure:

> The North Carolina Rules of Appellate Procedure are mandatory and "failure to follow these rules will subject an appeal to dismissal." In the instant case, plaintiff has failed to comply with Rule 10 and Rule 28(b). . . . [T]he Rules of Appellate Procedure must be consistently applied; otherwise, the Rules become meaningless, and an appellee is left without notice of the basis upon which an appellate court might rule.

Viar v. N.C. dep't of Transp., 359 N.C. 400, 401,402, 610 S.E. 2d 360, 360-61 (2005) (quoting *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E. 2d 298, 299 (1999), and citing *Bradshaw v. Stansberry*, 164 N.C. 356, 79 S.E. 302 (1913))

Because plaintiff's appeal is in substantial violation of the North Carolina Rules of Appellate Procedure, his appeal is

Dismissed.

Judges WYNN and CALABRIA concur.

Report per Rule 30(e).

Appendix 2 (B)

No. 486P06 THREE-B DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

(Wendt v Thomas, et al)

PETER M. WENDT

V

RALPH THOMAS, JR., Sheriff of Carteret County, Respondent Superior of ROY GITTINGS, Deputy Sheriff of Carteret County; BILL O'BRIEN, (former) Deputy Sheriff of Carteret County; THARVELERS BOND a/k/a Travelers Casualty and Surety Company of America, Surety

From NC Court of Appeals
(04-1651)
From Carteret
(03CVS1370)

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ORDER

Upon consideration of the petition filed by Plaintiff on the 28th day of March 2007 in this matter for a writ of certiorari to review the decision of the North Carolina Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this 3rd day of May 2007.

s/ Hudson, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this 10th day of May 2007.

Christie Speir Cameron
Clerk, Supreme Court of North Carolina

[signature]
Shaula A. Brannan
Assistant Clerk

Copy to: [Seal]
North Carolina Court of Appeals
Mr. Ralph A. White, Appellate Reporter (by E-Mail)
Mr. Peter Wendt, Pro Se, For Wendt
Mr. Claud Wheatly, III, Attorney at Law, For Thomas et al (by E-Mail)
West Publishing Company (By E-mail)
Lexis-Nexis (By E-mail)
LOIS Law (By E-mail)

Appendix 3 (C)
Article 1, Section 19,
North Carolina Constitution

North Carolina Constitution: Article 1, Sec. 19. Law of the land; equal protection of the laws. No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Appendix 4 (D)
Article IV, Section 13,
North Carolina Constitution

North Carolina Constitution, Article IV, Sec. 13. Forms of action; rules of procedure.

(1) Forms of action. There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) Rules of procedure. The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

Appendix 5 (E)

Fourteenth Article in Amendment Constitution of the United States of America as it applies to the states

Fourteenth Amendment of the Constitution of the United States of America, Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.